



MONTANA MINING ASSOCIATION

EXHIBIT 2
DATE 4/10/2015
SB 409

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PLEASE VOTE YES ON SB 409

Summary of SB 409

Tailings Storage Facilities (TSF) Legislation

Montana's current tailings storage facilities are being operated in a safe and responsible manner with strong oversight by state and federal regulators. Montana's mine operators currently construct, operate, maintain, and reclaim tailing storage facilities in a responsible, conscientious manner that is protective of human health and the environment.



This legislation builds upon the current good stewardship by mandating requirements that are as strong as, or stronger than, any regulations governing TSF elsewhere. This is necessary to provide mine operators with a predictable permitting path for a critical piece of its operating infrastructure, to provide the regulators a strong regulatory regime with the appropriate enforcement authority, and to provide the public with the knowledge that development of our natural resources can and will be done under strong regulations that protect the environment without compromising a strong economy.

Section 1: Adds tailings storage facilities to the legislative intent of the Metal Mine Reclamation Act.

Section 2: Definitions – specifically note these three definitions:

“Qualified Engineer” means a professional engineer who has a minimum of 10 years direct experience with the design and construction of the tailings storage facilities and has the appropriate professional and educational credentials to effectively determine appropriate parameters for the safe design, construction, operation and closure of a tailings storage facility.

“Independent Review Engineer” means an engineer licensed in a credible jurisdiction who is a recognized expert in tailings storage facility design, construction, operation, and closure.

“Tailings Storage Facility” means a facility which temporarily or permanently stores tailings, including the impoundment, embankment, distribution works reclaim water works, monitoring devices, stormwater diversions and other ancillary structures. The term does not include a facility that stores 50 acre-feet or less of free water or process solution, which is a low-hazard dam that could be associated with a small mine.

Section 3: This section corrects citations in the small miners exemption section of the law.

Section 4: Outlines the duties of the engineer of record. Note that (2) requires that the engineer of record may not be an employee of any operator or permit applicant.

Section 5: This is what is required in the TSF design document. The list includes over 30 detailed items that are site specific to each applicant. Some of the notable items in the list:

(e) an evaluation indicating that the proposed tailings storage facility will be designed, operated, monitored and closed using the most applicable, appropriate and current technologies and techniques as is practicable given site specific conditions and concerns.

(g) a demonstration through site investigation, laboratory testing, geotechnical analyses, and other appropriate means that the tailings, embankment, and foundation materials controlling slope stability are not susceptible to liquefaction or to significant strain-weakening under the anticipated static or cyclic loading condition, to the extent that the amount of estimated deformation under the loading condition would result in loss of containment.

Included in this section are the following requirements:

- analysis showing that the TSF will withstand a 1 in 10,000 year earthquake event or Maximum Credible Earthquake, whichever is larger
- design criteria to manage the Probable Maximum Flood event
- detailed risk analysis and a plan for addressing those risks
- quantitative performance parameters for construction, operation and closure
- description of how the design will integrate into the final closing plans and requirements for post closure monitoring, inspection and review

Section 6: Creates the Independent Review Panel that will review the TSF design document. The panel will be made up of three expert independent engineers, all of which must be approved by the DEQ. The DEQ, applicant, and Engineer of Record may participate in the panel. The panel's final report must be signed by all three expert independent review engineers. The cost of the panel is the responsibility of the permit applicant.

Section 7: Covers quality assurance during the construction of the TSF. This requires an independent engineer to monitor the construction and gives the DEQ authority, following consultation and investigation, to take enforcement action if the TSF is not being constructed as specified in the approved design document.

Section 8: Requires the development of a Tailings, Operating, Maintenance, and Surveillance (TOMS) manual that clearly identifies the responsibilities of the operator, necessary maintenance, training and operational aspects. The section also requires monitoring, data collection, and describes how issues identified will be resolved. An emergency response plan will be included as well as identification of trigger levels or events that will require immediate notification of the Engineer of Record and the DEQ.

Section 9: A periodic review, conducted by the Independent Review Panel, will be required at least once every 5 years. The panel will inspect the tailings facility, review the maintenance and operation records and the engineer of record's inspection reports. After the panel has prepared its final report, the operator is required to prepare and submit to the DEQ an action plan to effectively implement any recommendations.

Section 10: Requires the Engineer of Record to conduct annual inspections and prepare a report that is submitted to both the operator and the DEQ. If there are any recommendations resulting from the review, the operator must prepare a plan to implement recommendations within 120 days. If the operator fails to implement any corrective actions or substantially deviates from the approved engineering designs, the DEQ has enforcement authority.

Section 11: Amends current operating permit requirements, specific to TSF, to require the submission of the final certified design document, an independent review panel report, and the TOMS manual prior to issuance of a draft permit.

Section 12: Amends current reclamation plan requirements to include the requirements for post closure monitoring of a TSF agreed to by the Independent Review Panel.

Section 13: Requires that DEQ verify the receipt of the certified design document, the independent panel review and the TOMS prior to declaring an application complete and compliant and issuing a draft permit.

Section 14: Defines that minor modifications to a TSF, provided the proposed modification is certified by the seal of the engineer of record, the capacity increase from the expansion no greater than 15% of the existing capacity, the modification complies with other requirements in Section 5, do not require a complete design document and panel review process.

Section 15: Codification

Section 16: This legislation applies to operators producing or milling ore under an existing permit on or after the effective date of the act and applicants who submit an application for an operating permit after the effective date of the act.